

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-01477-CKK**

INSTITUTE FOR JUSTICE v. INTERNAL REVENUE
SERVICE et al
Assigned to: Judge Colleen Kollar-Kotelly
Cause: 05:552 Freedom of Information Act

Date Filed: 06/22/2018
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

INSTITUTE FOR JUSTICE

represented by **Ryan S. Baasch**
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2200
Fax: (202) 637-2201
Email: ryan.baasch@lw.com
ATTORNEY TO BE NOTICED

Andrew D. Prins
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004-1304
(202) 637-2200
Fax: (202) 637-2201
Email: andrew.prins@lw.com
ATTORNEY TO BE NOTICED

V.

Defendant

INTERNAL REVENUE SERVICE

represented by **Ryan O'Connor McMonagle**
U.S. DEPARTMENT OF JUSTICE
Tax Division
Ben Franklin Station
P.O. Box 227
Washington, DC 20044
(202) 307-1355
Fax: (202) 514-6866
Email: ryan.mcmonagle@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Catriona M. Coppler
U.S. DEPARTMENT OF JUSTICE
Tax Division
Ben Franklin Station
P.O. Box 227
Washington, DC 20044
(202) 514-5153
Fax: (202) 514-6866
Email: catriona.m.coppler@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant

DEPARTMENT OF JUSTICE

represented by **Melanie Dyani Hendry**
U.S. ATTORNEY'S OFFICE FOR THE

DISTRICT OF COLUMBIA
 555 Fourth Street, NW
 Washington, DC 20530
 (202) 252-2510
 Fax: (202) 252-2599
 Email: melanie.hendry2@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/22/2018	<u>1</u>	COMPLAINT against DEPARTMENT OF JUSTICE, INTERNAL REVENUE SERVICE (Filing fee \$ 400 receipt number 0090-5550915) filed by INSTITUTE FOR JUSTICE. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Civil Cover Sheet, # <u>12</u> Summons to Internal Revenue Service, # <u>13</u> Summons to Department of Justice, # <u>14</u> Summons to U.S. Attorney General, # <u>15</u> Summons to U.S. Attorney for D.C.)(Prins, Andrew) (Entered: 06/22/2018)
06/22/2018	<u>2</u>	Corporate Disclosure Statement by INSTITUTE FOR JUSTICE. (Prins, Andrew) (Entered: 06/22/2018)
06/22/2018		Case Assigned to Judge Trevor N. McFadden. (zmd) (Entered: 06/25/2018)
06/25/2018	<u>3</u>	NOTICE of Appearance by Ryan S. Baasch on behalf of INSTITUTE FOR JUSTICE (Baasch, Ryan) (Entered: 06/25/2018)
06/25/2018	<u>4</u>	STANDING ORDER Establishing Procedures for Cases Before Judge Trevor N. McFadden. The parties are hereby ORDERED to read and comply with the directives in the attached standing order. Signed by Judge Trevor N. McFadden on 6/25/2018. (lctnm3) (Entered: 06/25/2018)
06/26/2018	<u>5</u>	SUMMONS (4) Issued Electronically as to DEPARTMENT OF JUSTICE, INTERNAL REVENUE SERVICE, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Notice and Consent) (zmd) (Entered: 06/26/2018)
07/26/2018	<u>6</u>	NOTICE of Appearance by Melanie Dyani Hendry on behalf of DEPARTMENT OF JUSTICE (Hendry, Melanie) (Entered: 07/26/2018)
07/26/2018	<u>7</u>	Consent MOTION for Extension of Time to File Answer re <u>1</u> Complaint,, <i>or Otherwise Respond to Complaint</i> by INTERNAL REVENUE SERVICE (Attachments: # <u>1</u> Text of Proposed Order)(McMonagle, Ryan) (Entered: 07/26/2018)
07/31/2018	<u>8</u>	Case randomly reassigned to Judge Colleen Kollar-Kotelly. Judge Trevor N. McFadden is no longer assigned to the case. (ztnr) (Entered: 07/31/2018)
07/31/2018		MINUTE ORDER: Defendants having moved for an extension of time to answer or otherwise respond to the <u>1</u> Complaint, having shown good cause, and the Plaintiff having not opposed the motion, it is hereby ORDERED that the Defendants' motion for a 30-day extension to answer or otherwise respond to the <u>1</u> Complaint is GRANTED <i>nunc pro tunc</i> ; and the Internal Revenue Service and the Department of Justice shall answer or otherwise respond to the <u>1</u> Complaint in this action no later than AUGUST 28, 2018. Signed by Judge Colleen Kollar-Kotelly on July 31, 2018. (lcckk1) (Entered: 07/31/2018)
07/31/2018		Set/Reset Deadlines: Answers due by 8/28/2018. (dot) (Entered: 07/31/2018)
07/31/2018	<u>9</u>	ORDER ESTABLISHING PROCEDURES FOR CASES ASSIGNED TO JUDGE COLLEEN KOLLAR-KOTELLY. Signed by Judge Colleen Kollar-Kotelly on 07/31/2018.(DM) (Entered: 07/31/2018)
08/01/2018	<u>10</u>	NOTICE of Appearance by Catriona M. Coppler on behalf of INTERNAL REVENUE SERVICE (Coppler, Catriona) (Entered: 08/01/2018)
08/20/2018	<u>11</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. INTERNAL REVENUE SERVICE served on 6/28/2018 (Prins, Andrew) (Entered: 08/20/2018)

08/20/2018	<u>12</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. DEPARTMENT OF JUSTICE served on 6/29/2018 (Prins, Andrew) (Entered: 08/20/2018)
08/20/2018	<u>13</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 6/29/2018. (Prins, Andrew) (Entered: 08/20/2018)
08/20/2018	<u>14</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 6/29/2018. Answer due for ALL FEDERAL DEFENDANTS by 7/29/2018. (Prins, Andrew) (Entered: 08/20/2018)
08/28/2018	<u>15</u>	ANSWER to Complaint by DEPARTMENT OF JUSTICE.(Hendry, Melanie) (Entered: 08/28/2018)
08/28/2018	<u>16</u>	ANSWER to Complaint by INTERNAL REVENUE SERVICE.(Coppler, Catriona) (Entered: 08/28/2018)
08/29/2018	<u>17</u>	ORDER. The parties shall file a Joint Status Report by no later than SEPTEMBER 19, 2018. Signed by Judge Colleen Kollar-Kotelly on 8/29/2018. (lcckk3) (Entered: 08/29/2018)
08/29/2018	<u>18</u>	AMENDED COMPLAINT for Declaratory and Injunctive Relief against All Defendants filed by INSTITUTE FOR JUSTICE. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N)(Baasch, Ryan) (Entered: 08/29/2018)
08/29/2018		Set/Reset Deadlines: Joint Status Report due by 9/19/2018. (dot) (Entered: 08/31/2018)
09/12/2018	<u>19</u>	ANSWER to <u>18</u> Amended Complaint, by DEPARTMENT OF JUSTICE.(Hendry, Melanie) (Entered: 09/12/2018)
09/12/2018	<u>20</u>	ANSWER to <u>18</u> Amended Complaint, by INTERNAL REVENUE SERVICE.(Coppler, Catriona) (Entered: 09/12/2018)
09/19/2018	<u>21</u>	Joint STATUS REPORT by INSTITUTE FOR JUSTICE. (Baasch, Ryan) (Entered: 09/19/2018)
09/20/2018		MINUTE ORDER: The Court is in receipt of parties' <u>21</u> Joint Status Report. The parties represent that Defendant has completed Plaintiff's 2016 request. Defendant is continuing to work on Plaintiff's 2017 and 2018 requests and will be able to provide a schedule for completing these requests within the next forty-five days. Plaintiff anticipates that it will file a Motion for Summary Judgment regarding withholdings in the production of Plaintiff's 2016 request. But, to avoid bifurcated briefing, Plaintiff will not file a Motion for Summary Judgment before more information is known about the 2017 and 2018 requests. The Court ORDERS the parties to file a Joint Status Report by NOVEMBER 2, 2018 apprising the Court on the status of Defendant's progress on Plaintiff's FOIA requests. If circumstances warrant, parties will also file a proposed briefing schedule for summary judgment at that time. Signed by Judge Colleen Kollar-Kotelly on 09-20-2018. (lcckk3) (Entered: 09/20/2018)
09/20/2018		Set/Reset Deadlines: Joint Status Report due by 11/2/2018, apprising the Court on the status of Defendant's progress on Plaintiff's FOIA requests. (dot) (Entered: 09/21/2018)
11/02/2018	<u>22</u>	Joint STATUS REPORT by INSTITUTE FOR JUSTICE. (Baasch, Ryan) (Entered: 11/02/2018)
11/02/2018		MINUTE ORDER: The Court is in receipt of the parties' <u>22</u> Joint Status Report.Plaintiff and the IRS report that the IRS's search for documents responsive to Plaintiff's 2017 and 2018 requests has identified approximately 13,209 responsive pages. The IRS has proposed to produce the documents on a rolling basis, with a final deadline for the entire production of February 25, 2019. Plaintiff and the IRS are ORDERED to file a further Joint Status Report on MARCH 4, 2019, proposing a schedule for summary judgment briefing on withholdings from the 2016 IRS request and, if needed, on withholdings from the 2017 and 2018 IRS requests.Plaintiff and the

		DOJ report that DOJ's initial search has returned approximately 1 million responsive pages, and the search is ongoing. The DOJ anticipates that it can propose a production schedule by November 30, 2018. But, Plaintiff requests that the Court order the parties to file another Joint Status Report by November 16, 2018, apprising the Court of whether negotiations to narrow Plaintiff's request have been fruitful. Plaintiff and the DOJ are ORDERED to file another Joint Status Report on NOVEMBER 16, 2018, apprising the Court on the status of efforts to narrow Plaintiff's request. Signed by Judge Colleen Kollar-Kotelly on 11/2/2018. (lcckk3) (Entered: 11/02/2018)
11/02/2018		Set/Reset Deadlines: Joint Status Report by Plaintiff and DOJ due by 11/16/2018, apprising the Court on the status of efforts to narrow Plaintiff's request. Joint Status Report by Plaintiff and IRS due by 3/4/2019, proposing a schedule for summary judgment briefing on withholdings from the 2016 IRS request and, if needed, on withholdings from the 2017 and 2018 IRS requests. (dot) (Entered: 11/05/2018)
11/16/2018	<u>23</u>	Joint STATUS REPORT by INSTITUTE FOR JUSTICE. (Baasch, Ryan) (Entered: 11/16/2018)
11/16/2018		MINUTE ORDER: The Court is in receipt of the parties' <u>23</u> Joint Status Report. The parties report that they have made some progress in narrowing the scope of Plaintiff's FOIA request. Defendant DOJ will be able to propose a processing schedule by November 30, 2018. But, Defendant DOJ cannot provide any information to Plaintiff earlier as Defendant DOJ is still compiling the necessary information. Plaintiff notes that, depending on Defendant DOJ's proposed schedule, it reserves the right to ask the Court to order Defendant DOJ to produce all responsive documents by a date certain. The Court ORDERS the parties to file another Joint Status Report by NOVEMBER 30, 2018, setting forth Defendant DOJ's proposed schedule and Plaintiff's response. Signed by Judge Colleen Kollar-Kotelly on 11/16/2018. (lcckk3) (Entered: 11/16/2018)
11/30/2018	<u>24</u>	Joint STATUS REPORT by DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Butler Declaration)(Hendry, Melanie) (Entered: 11/30/2018)
12/07/2018		MINUTE ORDER: The Court is in receipt of the parties' <u>24</u> Joint Status Report. Plaintiff and the DOJ report that DOJ's search for Plaintiff's FOIA request has identified approximately 35,000 potentially responsive pages. The parties disagree on a timeline for processing and releasing the responsive documents. DOJ proposes that it make monthly rolling productions, with 400 pages reviewed per month, beginning January 4, 2019. Plaintiff insists that this production schedule is too slow. While Plaintiff does not dispute that the review of potentially responsive documents may begin on January 4, 2019, Plaintiff proposes that more pages be reviewed each month. Plaintiff points out that that DOJ's proposed schedule would result in full production taking over seven years. Instead, Plaintiff proposes that DOJ make monthly rolling productions, with 8,800 pages reviewed per month. Through the Declaration of Christina Butler, DOJ insists that its FOIA unit is working diligently to process Plaintiff's FOIA request, which is only one of 606 pending requests. But, DOJ has not informed the Court where Plaintiff's request falls in the que of other requests. The Court ORDERS DOJ to supply the Court with this information in a Status Report by DECEMBER 19, 2018. This information will assist the Court in determining whether 400 pages per month is a reasonable schedule. The Court further ORDERS that DOJ's December 19, 2018 Status Report include a categorization of the types of documents that DOJ has identified as potentially responsive to Plaintiff's request. Plaintiff can use this information to prioritize DOJ's document processing and release, such as leaving to the last release public documents. Signed by Judge Colleen Kollar-Kotelly on 12/7/2018. (lcckk3) (Entered: 12/07/2018)
12/07/2018		Set/Reset Deadlines: DOJ's Status Report due by 12/19/2018. (dot) (Entered: 12/07/2018)
12/18/2018	<u>25</u>	STATUS REPORT by DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Declaration of Christina Butler)(Hendry, Melanie) (Entered: 12/18/2018)
12/19/2018		MINUTE ORDER: The Court is in receipt of the Defendant DOJ's <u>25</u> Status Report. In accordance with the Court's December 7, 2018 Minute Order, Defendant DOJ filed a Status Report informing the Court of where Plaintiff's request falls in the que of other requests and categorizing the types of documents that Defendant DOJ has identified as potentially responsive to Plaintiff's request. Given this new information,

		the Court ORDERS Defendant DOJ and Plaintiff to meet and confer in an attempt to create and prioritize a mutually agreeable production plan. The Court ORDERS the parties to file another Joint Status Report by JANUARY 11, 2019, informing the Court of the parties' efforts to develop a production schedule. Signed by Judge Colleen Kollar-Kotelly on 12/19/2018. (lcckk3) (Entered: 12/19/2018)
12/19/2018		Set/Reset Deadlines: Joint Status Report due by 1/11/2019. (dot) (Entered: 12/19/2018)
12/27/2018	<u>26</u>	MOTION to Stay <i>in Light of Lapse in Appropriations</i> by INTERNAL REVENUE SERVICE (Coppler, Catriona) (Entered: 12/27/2018)
01/02/2019		MINUTE ORDER: The Court is in receipt of Defendant's <u>26</u> Motion for Stay of the Internal Revenue Service's Production Schedule. Defendant IRS requests a stay because the appropriations act which had been funding the IRS has lapsed. Defendant IRS requests that a stay be granted pending restored appropriations. Defendant IRS indicates that it will notify the Court once appropriations have been restored, and all deadlines for the parties can be extended commensurate with the duration of the appropriations lapse. Defendant IRS indicates that Plaintiff does not oppose this motion. Defendant's motion is GRANTED. Defendant IRS is ORDERED to file a Status Report informing the Court of the parties' new deadlines within five days of the restoration of appropriations. Signed by Judge Colleen Kollar-Kotelly on 1-2-2019. (lcckk3) (Entered: 01/02/2019)
01/02/2019		Case STAYED. (kt) (Entered: 01/02/2019)
01/30/2019	<u>27</u>	STATUS REPORT by INTERNAL REVENUE SERVICE. (Coppler, Catriona) (Entered: 01/30/2019)
01/31/2019		MINUTE ORDER: The Court is in receipt of Defendant IRS's <u>27</u> Notice and Status Report. Defendant reports that funding has been restored to the Department of Justice and the Internal Revenue Service for at least the next three weeks. Accordingly, the Court ORDERS the stay lifted. Plaintiff and Defendant IRS have agreed that Defendant IRS will continue producing records on a rolling basis with a final deadline for the entire production of APRIL 2, 2019. Plaintiff and Defendant IRS are ORDERED to file a Joint Status Report by APRIL 8, 2019, proposing a summary judgment briefing schedule. The Court further ORDERS Plaintiff and Defendant DOJ to file a Joint Status Report by FEBRUARY 15, 2019, informing the Court of the parties' efforts to develop a production schedule. The parties were previously ordered to file a Joint Status Report by January 11, 2019; but, due to the stay and the lack of appropriations, no report was filed. Signed by Judge Colleen Kollar-Kotelly on 1/31/2019. (lcckk3) (Entered: 01/31/2019)
02/15/2019	<u>28</u>	Joint STATUS REPORT by DEPARTMENT OF JUSTICE. (Hendry, Melanie) (Entered: 02/15/2019)
02/15/2019		MINUTE ORDER: The Court is in receipt of Plaintiff's and Defendant DOJ's <u>28</u> Joint Status Report. The parties have conferred about a rolling production schedule for responsive documents. For documents in prioritized categories 3-7, the parties agree that DOJ will complete its production of all non-exempt responsive documents in categories 4-7 by April 5, 2019, and its production of all non-exempt responsive documents in category 3 by May 3, 2019. The parties have not yet reached an agreement on a production schedule for the documents in categories 1 and 2 as DOJ does not yet know how many pages will be in those categories. The parties are ORDERED to file another Joint Status Report on or before MAY 17, 2019, indicating whether the parties have agreed on a production schedule for the documents in categories 1 and 2. If the parties have not reached an agreement, they should submit proposals for the Court's resolution. Signed by Judge Colleen Kollar-Kotelly on 2-15-2019. (lcckk3,) (Entered: 02/15/2019)
02/15/2019		Set/Reset Deadlines: Joint Status Report due by 5/17/2019, indicating whether the parties have agreed on a production schedule for the documents in categories 1 and 2. (dot) (Entered: 02/22/2019)
04/08/2019	<u>29</u>	Joint STATUS REPORT by INSTITUTE FOR JUSTICE. (Attachments: # <u>1</u> Exhibit 1)(Baasch, Ryan) (Entered: 04/08/2019)

04/09/2019		MINUTE ORDER: The Court is in receipt of the parties' <u>29</u> Joint Status Report. The parties report that IRS has made a complete production of five of the seven categories in Plaintiff's FOIA request. However, no documents responsive to the other two categories have been released. IRS recently identified approximately 90,000 pages responsive to these two categories. In an effort to narrow Plaintiff's request, IRS provided a sample of 74 pages responsive to the two categories. Plaintiff indicates that IRS applied exemptions to these sample pages in an overbroad fashion. Plaintiff requests that the Court order summary judgment briefing on IRS's applications of exemptions to the five categories it produced in full as well as on the application of exemptions to the representative sampling from the other two categories. IRS argues that the case is not ripe for summary judgment briefing because the Court would have to make a premature determination that IRS is improperly withholding records that have not been released. The Court will HOLD IN ABEYANCE Plaintiff's request for summary judgment briefing. The court ORDERS the parties to meet and confer in an attempt to further narrow Plaintiff's request as to the final two categories of documents. The Court further ORDERS the parties to file another Joint Status Report by MAY 24, 2019. The Joint Status Report should inform the Court whether or not IRS still opposes summary judgment briefing and how long it will take for the IRS to complete "searching and reviewing the potentially responsive records" and to finish "releasing all responsive, non-exempt records." ECF No. 29, 5. Signed by Judge Colleen Kollar-Kotelly on 4/9/2019. (lcckk3) (Entered: 04/09/2019)
04/09/2019		Set/Reset Deadlines: Joint Status Report due by 5/24/2019, inform the Court whether or not IRS still opposes summary judgment briefing and how long it will take for the IRS to complete "searching and reviewing the potentially responsive records" and to finish "releasing all responsive, non-exempt records." ECF No. 29, 5. (dot) (Entered: 04/09/2019)
04/16/2019	<u>30</u>	NOTICE of Change of Address by Ryan S. Baasch (Baasch, Ryan) (Entered: 04/16/2019)
05/17/2019	<u>31</u>	Joint STATUS REPORT by INSTITUTE FOR JUSTICE. (Baasch, Ryan) (Entered: 05/17/2019)
05/20/2019		MINUTE ORDER: The Court is in receipt of the parties' <u>31</u> Joint Status Report. The parties report that DOJ has made a complete production of five of the seven categories in Plaintiff's FOIA request. As to the remaining categories, there are approximately 18,170 potentially responsive pages. DOJ proposes that it make its next production on July 5, 2019 and that it complete production of all remaining responsive non-exempt records by no later than March 31, 2021. A two-year production schedule would not appear to be reasonable to the Court without further explanation. Plaintiff contends that this schedule is too slow and asks that the Court order DOJ to process a designated number of pages per month on a rolling basis and submits that 5,000 pages per month is a reasonable requirement. The Court ORDERS Defendant to file a Status Report by MAY 31, 2019 indicating to the Court whether or not processing 5,000 pages per month is feasible. If 5,000 pages per month is not possible, Defendant should suggest a reasonable designated number of pages per month which it can process. Signed by Judge Colleen Kollar-Kotelly on 5/20/2019. (lcckk3) (Entered: 05/20/2019)
05/20/2019		Set/Reset Deadlines: Defendants' Status Report due by 5/31/2019 indicating to the Court whether or not processing 5,000 pages per month is feasible. (dot) (Entered: 05/21/2019)